KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General
KATHERINE MESSANA
Deputy Attorney General
State Bar No. 272953
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2554
Facsimile: (213) 897-2804
Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ROBERT OWEN BAKER** 233 Alamosa Drive Hewitt, TX 76643 Registered Nurse License No. 590827 Respondent.	Case No. 2012-137 **ACCUSATION**

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about November 5, 2001, the Board of Registered Nursing issued Registered Nurse License Number 590827 to Robert Owen Baker ("Respondent"). The Registered Nurse License expired on June 30, 2007, and has not been renewed.

JURISDICTION AND STATUTORY PROVISIONS

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 118 subdivision (b) of the Code grants the Board jurisdiction over suspended, expired, forfeited, cancelled, or surrendered licenses:

> "The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

7. Section 2761 of the Code states:

> "The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:
>
> (a) Unprofessional conduct, which includes, but is not limited to, the following:
>
> ...
>
> (4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action."

8. Section 2762 of the Code states:

> "In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:
>
> (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

...

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

CONTROLLED SUBSTANCE

9. "Morphine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(L) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

10. "Codeine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(G) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

11. "Hydromorphone" (Dilaudid) is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, and a dangerous drug pursuant to Business and Professions Code section 4022. It is a narcotic analgesic used for the relief of severe pain.

12. "Mependine" (Demerol) is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(17) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

13. "Midazolam" (Versed), is a schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(21).

14. "Imitrex" is a dangerous drug as defined in section 4022 of the Code.

COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by the Texas Board of Nursing)

16. Respondent is subject to disciplinary action under Section 2671, subdivision (a)(4) of the Code on the grounds of unprofessional conduct because he was disciplined by the Texas Board of Nursing ("Texas Board"), as follows:

17. On or about January 21, 2009, the Texas Board issued an Order in the disciplinary action entitled, *In the Matter of Registered Nurse License Number 528338 issued to Robert Owen Baker*. In its Order, the Texas Board ordered the voluntary surrender of Registered Nurse License Number 528338, for failing to abide by the provisions of the Texas Peer Assistance Program for Nurses ("TPAPN") as provided in the Agreed Order. The circumstances underlying the surrender of Respondent's license by the Texas Board are as follows:

a. On or about October 11, 2004, while employed with Hillcrest Health System in Waco, Texas, Respondent failed to completely and accurately document a patient's status including, but not limited to, the patient being on a intra-aortic balloon pump, and that patient had a hematoma until 0700, when Respondent documented that the hematoma had increased from 0300. Respondent documented that the hematoma was 8cm, but it actually spanned the entire right groin, across to the left side of the penis, including the penis and scrotum. Respondent's conduct was likely to injure the patient.

b. On or about that same day, Respondent failed to institute appropriate nurse interventions required to stabilize a patient's condition, including, but not limited to, sustaining a patient's systolic blood pressure at greater than 100 as ordered. The patient's unassisted systolic blood pressure was 78 at 0130 and remained below 100 for the next five (5) hours. Respondent's conduct was likely to injure the patient from hypotensive-induced adverse reactions, including possible brain damage and/or demise.

c. On or about March 10, 2005 and March 11, 2005, Respondent withdrew Morphine and Versed from the Pyxis Medication Dispensing System ("Pyxis")

but failed to completely and accurately document the administration of the medication in the patient's Medication Administration Records ("MAR") and Nurse Notes.

d. On or about March 11, 2005, Respondent withdrew Morphine and Versed from the Pyxis but failed to follow the policy and procedure for the wastage of the medication.

e. On or about that same day, Respondent misappropriated Morphine and Versed belonging to the facility and patients thereof.

f. On or about March 19, 2005, Respondent engaged in the intemperate use of Morphine and Codeine as evidenced by a positive drug screen.

g. On or about June 3, 2006, while employed at Coryell Memorial Healthcare System in Gatesville, Texas, Respondent misappropriated Imitrex, Morphine and Demerol belonging to the facility and patients thereof in that he admitted misappropriating Imitrex, Morphine and Demerol from the facility's stock and from waste containers, tampering with vials of Demerol, and a vial of Imitrex belonging to the facility was found in Respondent's personal belongings.

h. On or about June 3, 2006, Respondent lacked fitness to practice professional nursing in that he exhibited impaired behavior while on duty, including but not limited to acting erratic and having pin-point pupils.

i. On or about June 3, 2006, Respondent engaged in the intemperate use of Morphine and Codeine as evidenced by a positive drug screen.

j. On or about September 1, 2006, Respondent was issued an Agreed Order by the Board of Nurse Examiners for the State of Texas requiring him to participate in and successfully complete the TPAPN.

k. On or about March 16, 2007, through March 17, 2007, while employed with Providence Healthcare in Waco, Texas, Respondent was non-compliant with the TPAPN requirements when he withdrew Dilaudid from the medication dispensing

system for patients but failed to completely and accurately document the administration of the medication in the patients' MARs, Nurses Notes, or both.

l. On or about March 16, 2007, through March 17, 2007, while employed with Providence Healthcare in Waco, Texas, Respondent was non-compliant with the TPAPN requirements when he withdrew Dilaudid from the medication dispensing system for patients, but failed to follow the policies and procedures for the wastage of the medication.

m. On or about March 16, 2007, through March 17, 2007, while employed with Providence Healthcare in Waco, Texas, Respondent was non-compliant with the TPAPN requirements when he misappropriated Dilaudid belonging to the facility and patients thereof, or failed to take precautions to prevent such misappropriation.

18. Under section 2761, subdivision (a)(4) of the Code, the Texas Board's disciplinary action against Respondent for diverting prescription drugs for her own use is grounds for the California Board to take disciplinary action.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

19. Respondent is subject to disciplinary action under section 2672, subdivisions (a) and (e) of the Code for obtaining Morphine, Codeine, Dilaudid, Demerol , Versed and Imitrex, controlled substances, in violation of the law, and for falsifying hospital and patient records to do so. The conduct is more particularly described in paragraph 17, subdivisions (c) through (m), inclusive, above, and herein incorporated by reference.

20. Respondent is subject to disciplinary action under section 2672, subdivision (b) of the Code by using Morphine and Codeine, schedule II controlled substances, which impaired his ability to conduct with safety his nursing practice. The conduct is more particularly described in paragraph 17, subdivisions (f), (h) and (i), inclusive, above, and herein incorporated by reference.

///

///

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 590827, issued to Robert Owen Baker;

2. Ordering Robert Owen Baker to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: August 30, 2011

LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2011601276
60671008.doc